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ORIGINAL

Supreme Court, U.S.
FILED
NOV 30 1985
JOSEPH F. SPANIOL JR.
CLERK

No. 85-236

IN THE SUPREME COURT OF THE UNITED STATES

1985 Term

HARRY W. EISENBERG,

Petitioner

vs.

DAVID ALAN YURKY,

Respondent

MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

The Respondent, David Alan Yurky, asks leave to file the attached Motion To Rescind Clerk's Order without prepayment of costs and to proceed in forma pauperis. Respondent has previously been granted leave to so proceed in both the U.S. District Court and U.S. Court of Appeals. Respondent's affidavit in support of this Motion is attached hereto.

Respectfully submitted,

David Yurky

David Yurky pro se

AFFIDAVIT OF DAVID YURAY

I, David Yurky, being first duly sworn according to law, depose and say that I am the Respondent in the above-entitled case; that in support of my motion to proceed without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to pay the costs of said case or to give security therefor; and that I believe I am entitled to redress.

I further swear that the responses which I have made to the questions and instructions below relating to my ability to pay the cost of proceeding in this Court are true.

1. Are you presently employed?

a. Yes. SCI-Huntingdon approximately $40 monthly

2. Have you received within the past twelve months any income from a business, profession or other form of self-employment, or in the form of rent payments, interest, dividends or other sources?

a. No.

3. Do you own any cash or checking or savings account?

a. Yes. approximately five dollars in prison account

4. Do you own any real estate, stocks, bonds, notes, automobiles or other valuable property (excluding ordinary household furnishings and clothing)?

a. No.

5. List the persons who are dependent upon you for support and state your relationship to those persons.

a. None.

I understand that a false statement or answer to any questions in this affidavit will subject me to penalties for perjury.

24th September, 1985
Naomi K. Detwiler

David Yurky
David Yurky pro se

NAOMI K. DETWILER, Notary Public
Huntingdon, Huntingdon Co., Pa.
My Commission Expires Feb. 20, 1989

SUPREME COURT U.S.
NOV 30 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-[illegible]

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER 1985 TERM

HARRY J. LAUGHLAUGH,

Petitioner

vs

DAVID ALAN YURKO,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT YURKO
IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

David Yurky
Drawer R
Huntingdon, PA 16652

QUESTION PRESENTED

Does due process require a hearing before an independent tribunal for a pretrial detainee transferred from a county prison to a state correctional institution on the basis of an emergency transfer as a security risk?

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OPINIONS BELOW

The Opinions of the Court of Appeals and of the District Court are unreported. Copies of those opinions may be found in the appendix to the petition for certiorari, respectively, at pages 1a-20a, and 1b-19b.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on May 10, 1985. The petition for writ of certiorari was filed within 90 days of that date, and jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment XIV:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

The petitioner, Harry W. Eichenlaub, is the Warden of the Clinton County Jail in the Commonwealth of Pennsylvania. The respondent, David Alan Yurky, was arrested on December 23, 1981 and confined at the Clinton County Jail as a pretrial detainee.

On January 8, 1982 Yurky was involuntarily transferred to the State Correctional Institution at Huntingdon, Pennsylvania. At no time prior to the transfer, was Yurky given any explanation or opportunity to be heard. Upon arrival at the state correctional institution, Yurky was confined in administrative segregation.

The Commonwealth of Pennsylvania, by promulgated regulations, requires county prison officials to provide inmates transferred from county facilities to state correctional institutions with a notice and an opportunity to be heard. See Brief For Respondents Zimmerman & Wicker In Opposition To Petition For A Writ Of Certiorari at pages 5 - 7. Under normal conditions, hearings must precede the transfer. id. However, under emergency situations, a post-transfer hearing is permissible. id. In this case, Yurky was provided with neither. id.

Yurky brought suit under 42 U.S.C. 1983 against Eichenlaub and other correctional officials, alleging that his transfer from the Clinton County Jail to the state correctional institution violated his due process rights under the Fourteenth Amendment. The District Court granted petitioner's motion for summary judgment, but the Court of Appeals for the Third Circuit reversed. The appellate Court determined that Yurky was not provided the transfer-related procedures which he was entitled.

This petition for a writ of certiorari followed.

SUMMARY OF ARGUMENT

This petition presents the question of what limits the Due Process Clause of the Fourteenth Amendment places on the discretion of prison officials to transfer an inmate from a county prison to a state correctional institution. Because the question of when due process is required in the context of prison transfers has squarely been resolved by this Court, the petition for certiorari should be denied.

ARGUMENT

The Fourteenth Amendment prohibits a State from depriving a person of life, liberty or property without due process of law. This Court has established the framework within which due process claims must be analyzed. First, it must be determined whether a "liberty" or "property" interest within the meaning of the Due Process Clause is implicated. Board of Regents vs Roth, 408 U.S. 564, 569 (1972). If such an interest exists, the second question is what process must be provided to satisfy due process. Morrissey vs Brewer, 408 U.S. 471, 481 (1972).

In the context of transfers of prisoners from one institution to another, the Supreme Court has thoroughly established the boundaries to which the Due Process Clause requires state officials to provide procedural safeguards. Since the decision below is within the scope of those boundaries, the petition for certiorari should be denied.

In Meachum vs Fano, 427 U.S. 215 (1976), inmates had brought a 1983 action challenging their transfer to less favorable prison facilities without due process of law. This Court held that the Due Process Clause of the Fourteenth Amendment does not entitle a state prisoner to a prior hearing when transferred from one correctional facility to another, absent a state law or regulation conditioning the transfer on proof of misconduct or the occurrence of specific events. id. at 226-228.

Following this was the companion case of Montanye vs Haynes, 427 U.S. 236 (1976). There the Court upheld, against a due process challenge, the transfer of a New York prisoner to less favorable confinement without affording him an opportunity to participate in a fact-finding hearing. The Court declared that not "every disadvantageous transfer must be accompanied by appropriate hearings." id. at 242. Only where the prisoner retains a justifiable expectation, rooted in state law, that a transfer will not occur except for misbehavior or other specified events is due process applicable. id.

Several years later, this Court applied the teachings of Meachum and Montanye to a case in which a Nebraska state prisoner challenged his transfer from a penal institution to a mental hospital. Vitek vs Jones, 445 U.S. 480 (1980). There, the Court held that the prisoner retained an objective expectation, rooted in Nebraska law, that he would not be transferred to a mental hospital unless he suffered from a mental disease or defect that could not be treated in prison. id. at 490. As such, the prisoner retained a liberty interest that entitled him to the benefits of appropriate procedures. id.

Finally, in Olim vs Wakinekona, 461 U.S. 238 (1983), a prisoner challenged his transfer from a state prison in Hawaii to one in California. The Court reiterated its prior rulings that a prisoner is not protected by the Due Process Clause, in and of itself, from institutional transfer. And since Hawaii's prison regulations placed no limitations on the discretion of officials to transfer a prisoner, the state had not created a liberty interest entitling the prisoner to procedural protections.

It is clear that the due process analysis employed by this Court in Meachum and Montanye, and continued through Vitek and Olim, has reamined unchanged. Where a liberty interest is at stake, the prisoner is entitled to those procedures appropriate under the Due Process Clause to insure that the interest is not arbitrarily abrogated. Conversely, where no protectible interest exists, the Constitution does not require transfer hearings.

In this case, the Commonwealth of Pennsylvania has promulgated regulations requiring county prison officials to provide prisoners transferred to state correctional facilities with hearings before the transfer, or in case of emergency conditions, following the transfer. See Brief For Respondents Zimmerman And Nicker In Opposition To Petition For A Writ Of Certiorari at 5-6. This is certainly within the Commonwealth's discretion. Meachum at 229 (individual states "are free" to require pretransfer hearings).

CONCLUSION

This case does not present a constitutional issue of widespread importance. The due process rights of prisoners in the context of institutional transfers has been thoroughly delineated by this Court in Meachum, Montanye, Vitek and Olim. For this reason, the petition for a writ of certiorari should be denied.

Respectfully submitted,

David Yurky

David Alan Yurky
Drawer R
Huntingdon, PA 16652

November 30, 1985

CERTIFICATE OF SERVICE

This is to certify that today, November 30, 1985, I, David Yurky caused a copy of this Brief For Respondent Yurky In Opposition To Petition For A Writ Of Certiorari to be deposited in the United States Mail at Huntingdon, Pennsylvania addressed to each of the following:

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